

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CHARLES LARRY HUNNICUTT,
TDCJ-CID NO. 1667980,

Plaintiff,

v.

CIVIL ACTION NO. H-13-2024

WILLIAM STEPHENS, et al.,

Defendants.

MEMORANDUM AND ORDER OF DISMISSAL

Texas prison inmate Charles Larry Hunnicutt, TDCJ-CID No. 1667980, has filed at least three prisoner civil rights suits in federal courts that were dismissed as frivolous. Hunnicutt v. Watkin, No. 3:10cv0618 (N.D. Tex. 2010); Hunnicutt v. Bowles, No. 3:95cv1290 (N.D. Tex. 1996); Hunnicutt v. Galligor, No. 3:93cv0454 (N.D. Tex. Apr. 10, 2009). Consequently, Hunnicutt is now barred from filing any new prisoner complaints without paying the filing fee in advance unless he is in imminent danger of serious physical harm at the time the suit is filed. 28 U.S.C. § 1915(g).

In the present action Hunnicutt asserts that he has been labeled as a "snitch" at the TDCJ Ferguson Unit where he is incarcerated. He further asserts that 80% of Ferguson's inmate population are gang members. Hunnicutt alleges that his life is in danger and that he had requested placement in protective custody by

the unit authorities. However, his request was denied after an investigation revealed that there was no evidence that Hunnicutt was in imminent danger. (Docket Entry No. 1-1, p. 9) Hunnicutt also complains that he has been denied access to TDCJ's physically handicapped program, although he is legally blind. He further complains that he has been denied a safe and secure environment because he has been convicted of sex offenses involving children. Hunnicutt complains that the additional fees that inmates must co-pay for medical services is a violation of the equal protection and ex post facto laws. He also complains that the excessive noise at Ferguson has caused him to suffer from sleep deprivation. Hunnicutt further complains about the birds at the unit. He alleges that the feces left on the window sills, as well as the early morning commotion created by the birds, has deprived him of sleep. Hunnicutt also complains that he has been denied adequate care for a scalp infection.

He complains that the denials violated his civil rights as well as his rights under the Americans with Disabilities Act and seeks injunctive relief as well as monetary damages.

Hunnicutt's pending complaint does not show that he is in any immediate danger of serious physical harm. The response to his grievances indicates that his life endangerment allegations have no basis. See Basey v. Mooneyham, 172 F. App'x 582, 584 (5th Cir. 2006). The mere presence of gang members at Ferguson does not necessarily support a finding that it is a dangerous prison in

violation of the Eighth Amendment. Labatad v. Corrections Corp. of America, 714 F.3d 1155, 1160 (9th Cir. 2013). Hunnicutt's unsupported fears that he might be attacked are not sufficient to warrant an exception to the three strikes rule of section 1915(g). See Davis v. Scott, 94 F.3d 444, 446-447 (8th Cir. 1996). This action will be dismissed because Hunnicutt is barred under 28 U.S.C. § 1915(g). Choyce v. Dominguez, 160 F.3d 1068, 1071 (5th Cir. 1998); Banos v. O'Guin, 144 F.3d 883, 884 (5th Cir. 1998).

Conclusion and Order

The court **ORDERS** the following:

1. The Application to Proceed In Forma Pauperis (Docket Entry No. 2) is **DENIED**.
2. The prisoner civil rights complaint (Docket Entry No. 1), filed by Charles Larry Hunnicutt, TDCJ No. 1667980, is **DISMISSED** without prejudice to refiling after payment of the filing fees. 28 U.S.C. § 1915(g).
3. All other motions (Docket Entry Nos. 4, 6, and 7) are **DENIED**.
4. The Clerk is directed to provide a copy of this Memorandum and Order of Dismissal, by mail or electronic means, to the parties; the TDCJ - Office of the General Counsel, P.O. Box 13084, Austin, Texas 78711; and the Pro Se Clerk for the United States District Court of the Eastern District of Texas, Tyler Division, 211 West Ferguson, Tyler, Texas 75702.

SIGNED at Houston, Texas, on this the 15th day of July, 2013.



SIM LAKE
UNITED STATES DISTRICT JUDGE